

7/13/09 1:09:52 ^{SS}
DK T BK 3,056 PG 371
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

DEED OF TRUST
(MULTIFAMILY)

Between

SILVERCREEK RETIREMENT COMMUNITIES, L.L.C.

And

ROBERT W. FIDLER, TRUSTEE

And

DEUTSCHE BANK BERKSHIRE MORTGAGE, INC.

As of July 17, 2009

Prepared for recording by: G. Wendell Thomas, Jr.
Return after recording to: Kennerly, Montgomery & Finley, P.C.
P.O. Box 442
Knoxville, TN 37901
865-546-7311

DEED OF TRUST

FHA Project No.
065-43120-PM

THIS DEED OF TRUST, made and entered into as of the 17th day of July, 2009 , by and by and between Silvercreek Retirement Communities, L.L.C. , a Mississippi limited liability company having its principal place of business at 9195 Laurel Hill West, Olive Branch, Mississippi 38654 (hereinafter called the "Grantor"); Robert W. Fidler, Trustee (hereinafter called the "Trustee") and Deutsche Bank Berkshire Mortgage, Inc., a Delaware corporation, having its principal post-office address at 4550 Montgomery Avenue, Suite 1100, Bethesda, Maryland called the "Beneficiary"):

WITNESSETH, That the Grantor, in consideration of the debt and trust hereinafter mentioned, and the sum of One Dollar (\$1) to the Grantor paid by the Trustee, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, and warrant unto the Trustee, the following-described real estate, together with all buildings and improvements thereon (or that may hereafter be erected thereon); and the hereditaments and appurtenances and all other rights thereunto belonging, or in anywise now or hereafter appertaining, and the reversion and reversions, remainder or remainders, rents, issues, and profits thereof, and all rights of homestead, situated in the City of Olive Branch , County of DeSoto , State of Mississippi, to wit:

See Exhibit A, attached to and made a part of this Deed of Trust

Together with all materials and equipment, now or hereafter delivered to the premises and intended to be incorporated therein; and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating, laundry, air-conditioning, and refrigerating equipment; all steam and hot-water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets, and other plumbing and heating fixtures; all mantels, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, furniture, shades, awnings, screens, blinds, and other furnishings; and

Together with all articles of personal property owned by the Grantor and now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the lands herein described which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all goods and chattels and personal property as are ever used or furnished in operating a building or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner. The parties hereto agree that all the foregoing property to the extent permitted by law shall be deemed to be affixed to and a part of the realty.

TO HAVE AND TO HOLD THE SAME UNTO THE TRUSTEE AND UNTO ITS SUCCESSORS AND ASSIGNS, FOREVER.

This conveyance is made in trust to secure payment of a just indebtedness of Grantor to Beneficiary in the principal sum of Eighteen Million One Hundred Forty Two Thousand Two Hundred and no/100 (\$18,142,200.00) evidenced by Note of even date herewith, bearing interest from date on outstanding balances at Seven and 05/100 percent (7.05%) said principal and interest being payable in monthly installments as provided in said Note with a final maturity of December 1, 2050 which Note is identified as being secured hereby by a certificate thereon. Said Note and all of its terms are incorporated herein by reference and this conveyance shall secure any and all extensions thereof, however evidenced.

AND ALSO IN FURTHER TRUST to secure payment of any additional sum or sums which may be due or become due from the Grantor to the Trustee or the holder of the said Note, or its or their successors and assigns, under the provisions hereof or under the provisions of a certain Building Loan Agreement hereinafter mentioned; and also to secure the performance on the part of the Grantor of each and every covenant, condition, and agreement contained herein or in said Building Loan Agreement hereinafter mentioned.

ALSO UPON THE FURTHER TRUST that the said Grantor shall remain in quiet and peaceable possession of the above-granted and described premises.

The Grantor, in order more fully to protect the security of this Deed of Trust, does hereby covenant and agree as follows:

1. That Grantor will pay the Note at the times and in the manner provided therein;
 2. That Grantor will not permit or suffer the use of any of the property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed;
 3. That the Regulatory Agreement, if any, executed by the Grantor and the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, which is being recorded simultaneously herewith, is incorporated in and made a part of the Deed of Trust. Upon default under the Regulatory Agreement and upon the request of the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable;
 4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Grantor, so long as no default exists hereunder, to collect such rents, profits and income for use in accordance with the provisions of the Regulatory Agreement;
 5. That upon default hereunder Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom;
 6. That at the option of the Grantor, the principal balance secured hereby may be reamortized on terms acceptable to the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner if a partial prepayment results from an award in condemnation in accordance with provisions of Paragraph 8 herein, or from an insurance payment made in accordance with provisions of Paragraph 7 herein, where there is a resulting loss of project income;
 7. That the Grantor will keep the improvements now existing or hereafter erected on the deeded property insured against loss by fire and such other hazards, casualties, and contingencies, as may be stipulated by the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner upon the insurance of the Deed of Trust and other hazards as may be required from time to time by the Beneficiary, and all such insurance shall be evidenced by standard Fire and Extended Coverage Insurance Policy or Policies, in amounts not less than necessary to comply with the applicable Coinsurance Clause percentage, but in no event shall the amounts of coverage be less than 80% of the Insurable Values or not less than the unpaid balance of the insured Deed of Trust, whichever is the lesser, and in default thereof the Beneficiary shall have the right to effect insurance. Such policies shall be endorsed with standard Mortgagee clause with loss payable to the Beneficiary and the Secretary of Housing and Urban Development as interest may appear, and shall be deposited with the Beneficiary;
- That if the premises covered hereby, or any part thereof, shall be damaged by fire or other hazard against which insurance is held as hereinabove provided, the amounts paid by any insurance company in pursuance of the contract of insurance to the extent of the indebtedness then remaining unpaid, shall be paid to the Beneficiary, and, at its option, may be applied to the debt or released for the repairing or rebuilding of the premises;
8. That all awards of damages in connection with any condemnation for public use of or injury to any of said property are hereby assigned and shall be paid to Beneficiary, who may apply the same to payment of the instalments last due under said Note, and Beneficiary is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances thereof and to appeal from any such award;
 9. That, together with and in addition to the monthly payments of interest or of principal and interest payable under the terms of the Note secured hereby, Grantor will pay to the Beneficiary on the first day of each succeeding month after the date hereof until the Note is fully paid, the following sums:
 - (a) An amount sufficient to provide the Beneficiary with funds to pay the next mortgage insurance premium if this instrument and the Note secured hereby are insured, or a monthly service charge, if they are held by the Secretary of Housing and Urban Development, as follows:
 - (I) If and so long as said Note of even date and this instrument are insured or are reinsured under the provisions of the National Housing Act, an amount sufficient to accumulate in the hands of the Beneficiary one month prior to its due date the annual mortgage insurance premium, in order to provide such Beneficiary with funds to pay such premium to the Secretary of Housing and Urban Development pursuant to the National Housing Act, as amended, and applicable Regulations thereunder, or
 - (II) If and so long as said Note of even date and this instrument are held by the Secretary of Housing and Urban Development, a monthly service charge in an amount equal to 1/12 of 1/2% of the average outstanding principal balance due on the Note computed for each successive year beginning with the first day of the month following the date of this instrument, if the Secretary of Housing and Urban Development is the Beneficiary, named herein, or the first day of the month following assignment, if the Note and this instrument are assigned to the Secretary of Housing and Urban Development, without taking into account delinquencies or prepayment;
 - (b) A sum equal to the ground rents, if any, next due, plus, the premiums that will next become due and payable on policies of fire and other property insurance covering the premises covered hereby, plus water rates, taxes and assessments next due on the premises covered hereby (all as estimated by the Beneficiary) less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such ground rents, premiums, water rates, taxes and assessments will become delinquent, such sums to be held by Beneficiary in trust to pay said ground rents, premiums, water rates, taxes, and special assessments;

(c) All payments mentioned in the two preceding subsections of this paragraph and all payments to be made under the Note secured hereby shall be added together and the aggregate amount thereof shall be paid each month in a single payment to be applied by Beneficiary to the following items in the order set forth:

- (I) premium charges under the Contract of Insurance with the Federal Housing Commissioner or service charge;
- (II) ground rents, taxes, special assessments, water rates, fire and other property insurance premiums;
- (III) interest on the Note secured hereby;
- (IV) amortization of the principal of said Note;

10. In the event the Grantor fails to pay any sums provided for in this Deed of Trust, the Beneficiary, at its option, may pay the same. Any excess funds accumulated under (b) of the preceding paragraph remaining after payment of the items therein mentioned, shall be credited to subsequent monthly payments of the same nature required thereunder; but if any such item shall exceed the estimate therefor, or if the Grantor shall fail to pay any other governmental or municipal charge, the Grantor shall forthwith make good the deficiency or pay the charge before the same become delinquent or subject to interest or penalties and in default thereof the Beneficiary may pay the same. All sums paid by the Beneficiary and any sums which the Beneficiary may be required to advance to pay mortgage insurance premiums shall be added to the principal of the debt secured hereby and shall bear interest from the date of payment at the rate specified in the Note and shall be due and payable on demand. In case of termination of the Contract of Mortgage Insurance by prepayment of the Deed of Trust in full, or otherwise (except as hereinafter provided), accumulations under (a) of the preceding paragraph hereof not required to meet payments due under the Contract of Mortgage Insurance, shall be credited to the Grantor. If the property is sold under foreclosure or is otherwise acquired by the Beneficiary after default, any remaining balance of the accumulations under (b) of the preceding paragraph shall be credited to the principal of the Deed of Trust as of the date of the commencement of foreclosure proceedings or as of the date the property is otherwise acquired; and accumulations under (a) thereof shall be likewise credited unless required to pay sums due the Federal Housing Commissioner under the Contract of Mortgage Insurance;

11. That it will not commit, permit, or suffer waste, impairment, or deterioration of said property or any part thereof, and in the event of the failure of the Grantor to keep the buildings on said premises and those to be erected on said premises, or improvements thereon, in good repair, the Beneficiary may make such repairs as in its discretion it may deem necessary for the proper preservation thereof, and the sums so paid shall bear interest from date at the rate specified in the Note, shall be payable on demand, and shall be fully secured by this Deed of Trust;

12. In the event of any default whereby the right of foreclosure occurs hereunder, the Trustee or the holder of said Note, shall at once become entitled to the possession, use, and enjoyment of the real estate aforesaid and to the rents, issues, and profits thereof, from the accruing of such rights and during the pendency of foreclosure proceedings and the period of redemption, if any there be, and such possession, use, and enjoyment, shall at once be delivered to the Trustee or the holder of said Note on request, and on refusal, the delivery of such possession may be enforced by Trustee or the noteholder by any appropriate civil suit or proceedings;

13. The Grantor further covenants and agrees that in case of a sale, as hereinabove provided, the Grantor or any person in possession under the Grantor, shall then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over;

14. That Grantor will not voluntarily create or permit to be created against the property subject to this Deed of Trust any lien or liens inferior or superior to the lien of this Deed of Trust, and further, that it will keep and maintain the same free from the claim of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises;

15. That the improvements about to be made upon the premises above described and all plans and specifications comply with all municipal ordinances and regulations made or promulgated by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the fire rating or inspection organization, bureau, association or office having jurisdiction which are now or may hereafter become applicable;

16. The Grantor covenants and agrees that so long as this Deed of Trust and the said Note secured hereby are insured or held by the Secretary of Housing and Urban Development under the provisions of the National Housing Act, it will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color or creed;

17. That no waiver of any covenant herein or of the Note secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the Note secured hereby;

18. That this Deed of Trust and the Note secured hereby were executed and delivered to secure moneys advanced or to be advanced and to be used in the construction of certain improvements on the lands herein described, in accordance with a building loan agreement between the Grantor and Beneficiary, dated of even date herewith, which building loan agreement (except such part or parts thereof as may be inconsistent herewith) is incorporated herein by reference to the same extent and effect as if fully set forth and made a part of this Deed of Trust; which said building loan agreement Grantor hereby covenants to perform; and if the construction of the improvements to be made pursuant to said building loan agreement shall not be carried on with reasonable diligence, or shall be discontinued at any time for any reason other than strikes or lock-outs, the Trustee, at the requires and on behalf of the Beneficiary after due notice to the Grantor or any subsequent owner, is hereby invested with full and complete authority to enter upon the said premises, employ watchmen to protect such improvements from depredation or injury, and to preserve and protect the personal property therein, and to continue any and all outstanding contracts for the erection and completion of said building or buildings, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of the Grantor, or other owner, and in the name and for the account of the Beneficiary, to pay and discharge all debts, obligations and liabilities incurred thereby. All such sums so advanced by and for the account of the Beneficiary (exclusive of advances of the principal of the indebtedness secured hereby) shall be added to the principal of the indebtedness secured hereby and shall be secured by this Deed of Trust and shall be due and payable on demand with interest at the rate specified in the Note but no such advances shall be insured unless same are specifically approved by the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner prior to the making thereof. The principal sum, with interest and other charges provided for herein shall at the option of the Beneficiary or holder of this Deed of Trust and the Note secured hereby, become due and payable on the failure of the Grantor, or owner, to keep and perform any of the covenants, conditions and agreements of said building loan agreement. This covenant shall be terminated upon the completion of the improvements to the satisfaction of the Beneficiary and the making of the final advance as provided in said building loan agreement.

If the Grantor shall well and truly keep and perform all the covenants and agreements in this Deed of Trust, and in the Note hereby secured, and well and truly pay off and discharge said Note and other indebtedness secured and intended to be secured hereby, then this conveyance shall be null and void, but otherwise, shall remain in full force and effect and if default shall be made in the payment of any installment provided for herein or in the Note secured hereby, and if such installment is not made good prior to the due date of the next such installment, or if default be made in the performance of any covenant, agreement or condition herein contained, then in any such event the entire unpaid principal balance of the sum secured hereby and all arrears of interest and sums paid by the holder or holders to remedy any default shall immediately become due and payable without notice at the option of the holder of said Note, and at the request of the Beneficiary, the said Trustee, or any successor appointed in his stead, shall sell the premises covered hereby at public auction for cash to the highest and best bidder, during legal hours, at any front door of the county courthouse of

County, State of Mississippi, after giving notice, by advertising and posting as required by law, of the time, place, and terms of sale. Out of the proceeds arising from such sale, the said Trustee, or any successor, shall first pay all the costs and expenses of executing this Trust, including a reasonable compensation of said Trustee; next, said Trustee shall pay the balance of the indebtedness hereby secured then remaining unpaid; and lastly, any balance remaining in the hands of said Trustee shall be paid to the Grantor. The Beneficiary, or any subsequent holder of the Note, is hereby authorized and empowered to appoint and substitute another Trustee in the place of the Trustee named herein, at any time, by writing, duly signed, and acknowledged and recorded in the county or counties where the premises covered hereby are situate, and such appointee shall have full power as the Trustee herein, together with all the rights and privileges thereunto belonging. If the holder of the Note is a corporation, its president may select and appoint such substituted Trustee. No one exercise of this power of appointment, power of sale, or any other power or right given in this Deed of Trust shall exhaust the right to exercise such power, but all rights and powers herein given may be exercised as often as may be necessary to achieve the perfect security and the collection of the indebtedness secured by this Deed of Trust until said indebtedness is fully paid and discharged. At any sale had by any Trustee hereunder, the Trustee may, from time to time, adjourn said sale to a later date without readvertising the sale by giving notice of the time and place of such continued sale at the time when and where the Trustee shall make such adjournment, and at any sale made to enforce the Trust herein given, the Beneficiary, or any person in interest, may become a purchaser, and upon payment of the purchase price, the Trustee shall execute a deed of conveyance, which conveyance shall vest full and perfect title in such purchaser upon payment of the purchase price;

The term "Beneficiary" wherever used shall be deemed to include any holder of the Note secured hereby unless the context requires a different construction. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective successors, and assigns of the parties hereto and to any substitute Trustee.

~~IN TESTIMONY WHEREOF, the said party hereto of the first part has caused these presents to be executed in its corporate name by its President, attested by its Secretary, and its corporate seal to be hereunto affixed, said officers being thereunto duly authorized, all as of the day, month, and year first hereinabove written.~~

Attest: By _____
Secretary. President.

STATE OF MISSISSIPPI,)
COUNTY OF) ss:

Personally came and appeared before me, the undersigned authority in and for said county and State, and _____, who by me first being duly sworn on oath state that they are respectively the President and Secretary of a corporation, and who acknowledged that acting for and in behalf of said corporation and being duly authorized thereto, they each signed, sealed, and delivered the above and foregoing instrument as the act and deed of said corporation. WITNESS my signature and seal of office on this the _____ day of _____, 19 _____

Notary Public.

~~My commission expires:~~

STATE OF MISSISSIPPI

LOAN No.

Deed of Trust

MISSISSIPPI RETIREMENT COMMUNITIES, L.L.C.

TO

Robert W. Fidler, Trustee

Trustee for

DEUTSCHE BANK BERKSHIE MORTGAGE, INC.

STATE OF MISSISSIPPI,

County of

I, _____

Clerk of the Court of Chancery of said

County, do hereby certify that the foregoing

instrument was filed for registration in this

office on the _____ day of _____, 19 _____

and was recorded in Vol. _____

Record of Deeds, pages _____

on the _____ day of _____, 19 _____

Clerk of the Court of Chancery.

NON-RECOURSE OBLIGATION. Notwithstanding any other provision of this Deed of Trust or the Deed of Trust Note, it is agreed that the execution of the Deed of Trust Note and the execution of this Deed of Trust will impose no personal liability on Maker for payment of the indebtedness imposed hereby, and, in the event of a default, the Holder shall look solely to the property described in the Deed of Trust and to the rents, issues, and profits therefrom in satisfaction of the indebtedness evidenced hereby and will not seek or obtain any deficiency or personal judgment against Maker except such judgment or decree as may be necessary to foreclose and bar Maker's interest in the property and all other property mortgaged, pledged, conveyed, or assigned to secure payment of the Deed of Trust Note, except as set out in this Deed of Trust.

IN TESTIMONY WHEREOF, the said Grantor has caused these presents to be executed in its name by Jerry Peoples, the Chief Manager of Silvercreek Retirement Communities, L.L.C. being thereunto duly authorized, all as of the day, month and year first hereinabove written.

SILVERCREEK RETIREMENT COMMUNITIES, L.L.C.
a Mississippi limited liability company

By *Jerry L. Peoples*
Jerry Peoples, Chief Manager

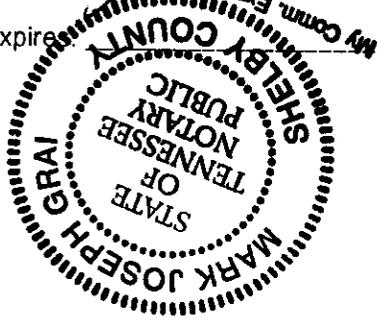
State of Tennessee
County of Shelby

Personally appeared before me, the undersigned authority in and for said county and state, on this 10th day of July, 2009, within my jurisdiction, the within named Jerry Peoples, who acknowledged that he is the Chief Manager of Silvercreek Retirement Communities, L.L.C., a Mississippi Limited Liability Company, and that for and on behalf of said limited liability company in his capacity as such Chief Manager and as its act and deed, he executed the above and foregoing instrument, after first having been duly authorized by said limited liability company so to do.

WITNESS my hand and seal at office in Memphis, Tennessee this 10th day of July, 2009.

Mark Joseph Gray
Notary Public

My Commission Expires



Silvercreek Senior Living Community
Olive Branch, Mississippi
065-43120-PM

Attachment A
Legal Description

A legal description of a 563,356.64 square feet or 12.93 acres, more or less, of land being located in the southwest quarter and the southeast quarter of the northeast quarter of Section 32, Township 1 South, Range 6 West, Olive Branch, DeSoto County, Mississippi, and being more particularly described as follows:

Commencing at a point commonly accepted as the northwest corner of the northwest quarter of the northwest quarter, said corner being the intersection of the centerlines of Goodman Road and Craft Road; thence South 00 degrees 00 minutes 00 seconds East for a distance of 2,143.82 feet to a point; thence North 90 degrees 00 minutes 00 seconds East for a distance of 3,379.96 feet to a 1/2" rebar set, said rebar being the TRUE POINT OF BEGINNING for the herein described tract (the north, east, and south property lines are contiguous with the Golf, Inc property as recorded in Book 279, Page 621 in the DeSoto County, Mississippi Chancery Clerks Office. The west property line is contiguous with the east right of way line of Crumpler Boulevard. All calls contained herein are meant to extend to the above described natural monuments); thence North 66 degrees 11 minutes 07 seconds East for a distance of 95.02 feet to a fence rail, found; thence North 56 degrees 18 minutes 36 seconds East for a distance of 247.68 feet to a fence rail, found; thence North 85 degrees 52 minutes 25 seconds East for a distance of 915.04 feet to a fence rail, found; thence South 18 degrees 25 minutes 24 seconds East for a distance of 594.17 feet to a iron pipe, found; thence North 79 degrees 21 minutes 20 seconds West for a distance of 511.64 feet to a iron pipe, found; thence South 84 degrees 50 minutes 57 seconds West for a distance of 764.10 feet to a fence rail found; thence North 23 degrees 37 minutes 56 seconds West for a distance of 323.33 feet to a point to the TRUE POINT OF BEGINNING and containing 563,356.64 square feet or 12.93 acres, more or less, being subject to all codes, conditions, regulations and restrictions, covenants, and rights of way of record.

END OF DESCRIPTION.